IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 483 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

HUSSEINI ISAKBHAI NALAWALA

Appearance:

1. Criminal Appeal No. 483 of 1988

MR BY MANKAD, ADDL.PUBLIC PROSECUTOR for Petitioner No. 1

MR DF AMIN for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 30/07/2001

ORAL JUDGEMENT

Food Inspector Shri Pravinchandra Manila Parikh took sample of chiku ice-cream on 9.5.1984, which was found to be adulterated as per the report of the Public analyst. Therefore, he filed complaint being Criminal case No. 1539 of 1984 before the Court of learned JMFC, Dahod.

Several defences were taken by the respondent accused, one of them was that he was not the owner of the shop and his father was the owner of the shop. The learned Magistrate found that the complainant has proved his case beyond reasonable doubt. The learned Magistrate found that the respondent accused was guilty for the offence under Section 7 of the Prevention of Food Adulteration Act and therefore, by his judgement and order dated 23.9.1986, respondent accused was sentenced to suffer six months SI and to pay a fine of Rs. 1,000/-. The aforesaid order of conviction and sentence was challenged by the respondent - accused before the Sessions Court by way of Criminal Appeal No. 47/86. The said appeal was allowed by the learned Sessions Judge by judgement and order dated 19.2.1986 and the order of conviction and sentence passed by the learned Magistrate was set aside, as the learned Judge was of the opinion that the complainant failed to prove the ownership of the shop from where he took the sample of the ice-cream.

Learned APP Shri Mankad appearing for the State of Gujarat vehemently submitted that the respondent cannot shirk his responsibility on the ground that he was not the owner of the shop from where the complainant took the sample. He submitted that the learned Sessions Judge was in error in setting aside the order of conviction and sentence passed by the learned Magistrate on the ground that the complainant failed to prove the ownership of the shop of the respondent accused.

Having carefully gone through the reasons assigned by the learned Magistrate for convicting the accused, it is clear that the complainant has miserably failed to prove the ownership of the shop of the respondent from where he took the sample. In fact, it has clearly come out in the cross-examination of P.W.2 that ownership of the shop was of Isakbhai who was the father of the respondent accused and the respondent accused was only the son, but doing tailoring work. Unfortunately, the learned Magistrate was of the opinion that on this ground the respondent accused cannot shirk his responsibility in selling adulterated ice-cream.

The complainant was required to prove his case against the respondent accused beyond reasonable doubt. When he comes before the Court with the case that he took the adulterated sample of ice-cream from the shop of the respondent accused, then it was his duty to prove that the respondent accused was owner of the shop and he was selling the ice-cream. In absence of it, the accused

cannot be convicted. Under the circumstances, when the learned Sessions Judge has interfered with the order of conviction and sentence and ordered acquittal of the accused, then certainly this Court will not interfere with the order of acquittal after 13 years in this appeal. Accordingly this appeal fails and is dismissed.

(B.J.Shethna, J.)

*/Mohandas